



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Robert G. Burnley
Director

Thomas L. Henderson
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER BY CONSENT ISSUED TO

Motion Control Industries, Incorporated

South Hill Facility

Registration Number VAR051536

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Motion Control Industries, Incorporated for the purpose of resolving violations of State Water Control Law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "Motion Control" means Motion Control Industries, Incorporated a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the industrial plant located in South Hill, Virginia, which Motion Control owns, operates, and controls.
8. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. "VPDES" means the Virginia Pollutant Discharge Elimination System.
10. "Point Source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged (*See* 9 Virginia Administrative Code ("VAC") 25-31-10).
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water (*See* 9 VAC 25-31-10).
12. "Storm Water Discharge Associated with Industrial Activity" means the discharge from any conveyance which is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant (*See* 9 VAC 25-151-10).
13. "No Exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff (*See* 9 VAC 25-151-10).
14. "Permit" means an authorization, certificate, license, or equivalent control document issued by the Board to implement the requirements of the VPDES Permit Regulation, and includes a VPDES general permit.
15. "SWPPP" means a Storm Water Pollution Prevention Plan. A SWPPP must be prepared and implemented prior to submitting a request for coverage under the

General Permit for Storm Water Discharges Associated with Industrial Activity
(See 9 VAC 25-151-80.A.2).

SECTION C: Findings of Facts and Conclusions of Law

1. Motion Control owns and operates a Facility in South Hill, Virginia. Motion Control manufactures heavy duty brake components at the Facility. Motion Control has been operating the Facility without coverage under the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity since about January 2002.
2. Va. Code § 62.1-44.16(1) states in relevant part that, “[a]ny owner who erects, constructs, opens, reopens, expands, or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes [i.e., pollutants] to state waters shall first provide facilities approved by the Board for the treatment or control of such industrial wastes or other wastes.”
3. The Standard Industrial Classification (“SIC”) code for the Motion Control Facility is 3714 (brake pads and shoes, automotive, truck, and bus, manufacturing). On May 26, 2004, the SCRO of the DEQ notified Motion Control in writing that coverage under the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity was required for the Facility.
4. On July 12, 2004, staff from the SCRO inspected the Facility and found discharges of Pollutants to state waters without a permit. The SCRO staff found two Point Sources (i.e., storm water discharge pipes) at the Facility and visible Pollutants were found in the water below both Point Sources.
5. Va. Code § 62.1-44.5.A prohibits, *inter alia*, the discharge of “sewage, industrial wastes, other wastes, or any noxious or deleterious substances” to State waters except in compliance with a permit issued by the Board.
6. Va. Code § 62.1-44.3 defines state waters as “all water, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.”

7. On July 16, 2004, the SCRO received from Motion Control a No Exposure certification and a registration statement for coverage under the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity.
8. On July 21, 2004, the SCRO notified Motion Control in writing that the No Exposure exemption was not applicable to its operations at the Facility, and the SCRO notified Motion Control in writing of the results of the July 12, 2004 inspection.
9. On November 15, 2004, SCRO staff re-inspected the Facility and found that no SWPPP had been prepared for the Facility and, therefore, the DEQ did not issue coverage under the General Permit.
10. On December 1, 2004, the SCRO notified Motion Control in writing that a SWPPP must be developed for the Facility prior to submitting a registration statement for coverage under the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity; this requirement is explicitly stated on the registration statement form and at 9 VAC 25-151-60. The SCRO also requested that Motion Control submit a SWPPP for verification and review before coverage under the VPDES General Permit could be obtained.
11. As of February 2005, the SCRO had not received a SWPPP. Thus, on February 3, 2005, the SCRO issued Notice of Violation, number NOV-05-02-SCRO-003, for the following violations of State Water Control Law:
 - a. Operating without coverage under the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity; and
 - b. The unpermitted discharge of Pollutants to State waters.
12. On February 24, 2005, the SCRO received a draft SWPPP from Motion Control.
13. On March 1, 2005, the SCRO and Motion Control met to discuss the SWPPP and the impending enforcement action.
14. Subsequently, Motion Control submitted a complete SWPPP and on March 14, 2005, DEQ confirmed coverage under the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders Motion Control, and Motion Control consents, to perform the actions contained in Appendix A of this Order. In addition, the Board orders Motion Control, and Motion Control consents, to pay a civil charge of \$16,660.00 within 30 days of the issuance of this Order in settlement of the violations cited herein. The payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Motion Control's Federal Identification Number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Motion Control, for good cause shown by Motion Control, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Motion Control admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Motion Control consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Motion Control declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Motion Control to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Motion Control shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such occurrence. Motion Control shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Motion Control and not due to a lack of good faith or diligence on its part. Motion Control shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

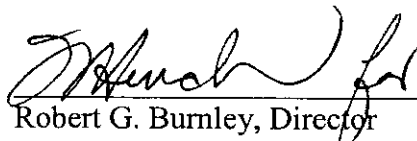
Failure to so notify the Regional Director within 24 hours of learning of any condition listed above, which Motion Control intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.
10. This Order shall become effective upon execution by the Director, or his designee, and Motion Control.
11. This Order shall continue in effect until:
- a. Motion Control petitions the Regional Director to terminate the Order after it has completed all requirements of the Order and the Director, or his designee, approves the termination of the Order; or
 - b. The Director or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Motion Control.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Motion Control from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Motion Control consents to the issuance of this Order.

And it is so ORDERED this 29th day of September, 2005.


Robert G. Burnley, Director
Department of Environmental Quality

Motion Control consents to the issuance of this Order.

Date: 5-6-05 By: Marc Reed
Marc Reed, South Hill Facility Manager, Motion Control
Industries, Incorporated

Commonwealth of Virginia
City/County of Mecklenburg

The foregoing document was signed and acknowledged before me this 6th day

of May, 2005, by Marc Reed, South Hill Facility Manager, Motion Control Industries, Incorporated, on behalf of said corporation.

Connie Rickman Clark
Notary Public

My commission expires: April 30, 2008

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Appendix A

1. For the purposes of the duration of this Order, Motion Control shall maintain compliance with the General Permit for Storm Water Discharges Associated with Industrial Activity and the Facility SWPPP for one year from the issuance of this Order.
2. Any violation of the General Permit for Storm Water Discharges Associated with Industrial Activity and/or the Facility SWPPP shall also constitute a violation of an Order from the Board pursuant to Va. Code § 62.1-44.31, and may subject Motion Control to additional administrative civil charges or other appropriate enforcement action.